

## **BOARD MEETING MINUTES** **November 8, 2012**

San Diego Golden Hall  
202 C Street, Silver Room  
San Diego, CA 92101

### **Members Present**

Dr. Christine Wietlisbach, Chair, Public Member  
Samara Ashley, Public Member  
Dr. Leah Brew, LPCC Member  
Eileen Colapinto, Public Member  
Betty Connolly, LEP Member  
Dr. Harry Douglas, Public Member  
Linda Forster, Public Member  
Patricia Lock-Dawson, Public Member  
Renee Lonner, LCSW Member  
Christina Wong, LCSW Member

### **Members Absent**

Deborah Brown, Public Member  
Sarita Kohli, LMFT Member  
Karen Pines, Vice Chair, LMFT Member

### **Staff Present**

Kim Madsen, Executive Officer  
Steve Sodergren, Asst. Executive Officer  
Rosanne Helms, Legislative Analyst  
Dianne Dobbs, Legal Counsel

### **Guest List**

On file

## **FULL BOARD OPEN SESSION**

### **I. Introductions**

Dr. Christine Wietlisbach, Board of Behavioral Sciences' (Board) Chair, opened the meeting at 8:15 a.m. Kim Madsen called roll. A quorum was established.

Board members, Board staff, and audience members introduced themselves.

### **II. Discussion and Possible Rulemaking Action Regarding Revisions to California Code of Regulations, Title 16, Sections 1811, 1870, and 1887.3**

Rosanne Helms presented proposed regulations that the Board is currently pursuing on advertising, supervision, and continuing education.

Currently the Board has identified areas of the law related to advertising which are unclear, such as what abbreviations may be used in an advertisement, and whether a licensee can use the term "psychotherapy" when advertising. The proposed amendments would require

advertisements by the Board's licensees and registrants to contain more specific information, including:

- Requiring the licensee or registrant to include his or her full title or a Board-specified abbreviation;
- Requiring the advertisement to contain the practitioner's license or registration number; and
- Requiring a registrant to disclose the name of his or her employer or the entity for which he or she is volunteering.

Supervisors of the Board's MFT interns are required to be licensed for at least two years before they can become a supervisor. This same requirement does not exist for supervisors of the Board's ASW registrants, even though supervision requirements are otherwise similar. The proposed amendment would require supervisors of ASWs to be licensed for at least two years prior to commencing any supervision.

Licensed marriage and family therapists (LMFT) and licensed clinical social workers (LCSW) are required to take a continuing education course covering HIV/AIDS. This same requirement does not exist for licensed professional clinical counselors (LPCC). However, LPCC licensees are just as likely to treat a patient affected by HIV/AIDS. The proposed amendment would require LPCCs to take a one-time seven hour CE course covering the assessment and treatment of people living with HIV and AIDS as part of their 36 hour CE coursework requirement.

The Board took the following actions on this regulatory proposal:

1. Approval of the Language. The Board approved the language proposed by this regulation package at the following Board meetings:
  - The Board approved the amendments related to advertising at the August 18, 2011 Board meeting.
  - The Board approved the amendments related to supervision of ASWs at the May 31, 2012 Board meeting.
  - The Board approved the amendments related to LPCC CE at the February 23, 2011 Board meeting.
2. Notice of Proposal: The proposal was then submitted to the Office of Administrative Law (OAL), and published in their Notice Register on June 29, 2012. It was then opened to public comment for a 45-day period.
3. Public Hearing: A public hearing was held on August 14, 2012. No public comment was received at the public hearing or during the 45-day public comment period.

Staff is ready to submit this regulation package to OAL for approval and is seeking final Board approval of the regulatory proposal.

***Renee Lonner moved to direct staff to take all steps necessary to finalize the rulemaking process, including making any non-substantive changes to the rulemaking package, and submitting the final package to the Office of Administrative Law. Christina Wong seconded. The Board voted unanimously (10-0) to pass the motion.***

### **III. Discussion and Possible Rulemaking Action Regarding the Implementation of SB 363, Chapter 384, Statutes of 2011**

Ms. Helms presented proposed regulations that the Board is currently pursuing to implement SB 363. The proposed amendments to Section 1833 are as follows:

#### **1. Experience**

Currently, applicants for LMFT licensure are allowed to obtain no more than a total of 250 experience hours toward the licensure experience requirements performing the following activities:

- Administering and evaluating psychological tests of counselees,
- Writing clinical reports,
- Writing progress notes, and
- Writing process notes.

This regulation is now in direct conflict with a recent statutory change. SB 363, which became law on January 1, 2012, addressed concerns that MFT interns were being allowed to gain too many client centered advocacy hours. Previously, the law limited the number of hours an MFT intern could obtain for direct supervisor contact, professional enrichment activities, and client centered advocacy together to 1,250 hours. SB 363 revised the law to allow up to 500 hours of experience in the following areas:

- Administering and evaluating psychological tests,
- Writing clinical reports,
- Writing progress notes,
- Writing process notes, and
- Client centered advocacy.

The Board is proposing an amendment to strike out California Code of Regulation (CCR) Title 16 Section 1833(a)(4), which allows 250 hours of experience administering and evaluating psychological tests of counselees, writing clinical reports, writing progress notes and writing process notes. This section is also in direct conflict with the new statute that allows up to a total 500 hours of experience in these areas and in client centered advocacy.

#### **2. Telephone Counseling**

Business and Professions Code (BPC) Section 2290.5 defines telehealth as a means of delivering health care services and public health via information and communication technologies.

Current law limits the number of experience hours that an applicant for LMFT may gain to no more than 375 hours of experience providing personal psychotherapy, crisis counseling, or other counseling services via telehealth. However, this statute is in conflict with CCR Title 16, Section 1833(a)(5), which limits an applicant seeking LMFT licensure to count no more than 250 hours of experience gained counseling or crisis counseling on the telephone.

The Board believes that the regulation is outdated, as it only limits counseling via telephone and does not provide for counseling provided over the internet. Therefore, the Board is proposing an amendment to strike out Section 1833(a)(5).

### 3. Errant References

The Board is proposing an amendment to correct errant references in Sections 1833(a) and (c) which have occurred as the statutes have changed over time.

The Board took the following actions on this regulatory proposal:

1. The Board approved the language proposed by this regulation package at the November 9, 2011 and February 29, 2012 Board meetings. The proposal was then submitted to OAL and opened to public comment for a 45-day period.
2. A public hearing was held on August 14, 2012. No public comment was received at the public hearing or during the 45-day public comment period.

Staff is ready to submit this regulation package to OAL and is seeking final Board approval of the regulatory proposal.

***Patricia Lock-Dawson moved to direct staff to take all steps necessary to finalize the rulemaking process, including making any non-substantive changes to the rulemaking package, and submitting the final package to the Office of Administrative Law. Samara Ashley seconded. The Board voted unanimously (10-0) to pass the motion.***

## IV. Discussion and Possible Rulemaking Action Regarding the Implementation of SB 1111

Ms. Helms presented proposed regulations that the Board is currently pursuing to implement SB 1111.

Over the past three years, there have been several efforts to streamline the enforcement processes for healing arts boards within the Department of Consumer Affairs (DCA). Currently, many boards take an average of three years to investigate and prosecute violations of the law, leaving consumers unprotected against potentially dangerous practitioners during this timeframe.

SB 1111 was introduced in 2010 as part of DCA's Consumer Protection Enforcement Initiative (CPEI). The goal of this bill was to provide healing arts boards under DCA with additional authority and resources to make the enforcement process more efficient. SB 1111 failed passage in the Senate Business, Professions and Economic Development Committee.

In 2011-2012, the Senate Business, Professions, and Economic Development Committee sponsored SB 544. This bill contained many of the same provisions as SB 1111, with the intent of improving efficiency and increasing accountability for boards within DCA. SB 544 also failed passage.

Due to the urgent need to protect consumers by streamlining the enforcement process, the Senate Business, Professions, and Economic Development Committee and DCA have asked healing arts boards to individually seek regulations to implement those provisions of SB 1111 and SB 544 that do not require new statutory authority.

The DCA legal office identified several components of SB 1111 and SB 544 that may be established through regulations. DCA has asked its healing arts boards to pursue these components through the rulemaking process:

1. Delegation of Certain Functions - Delegate to the Board's Executive Officer the authority to approve settlement agreements for revocation, surrender, and interim suspension of a license, or allow the Executive Officer to delegate this function to another designee.
2. Required Actions Against Registered Sex Offenders - Require that the Board deny or revoke a license or registration if the applicant or licensee is required to register as a sex offender pursuant to Penal Code Section 290. In addition, require that the Board deny any petition to reinstate or reissue a license or registration to a registered sex offender.
3. Unprofessional Conduct - Add four specified acts to the definition of unprofessional conduct:

The Board has taken the following actions on this regulatory proposal:

1. The Board approved the regulatory proposal on August 18, 2011. The proposal was then submitted to the Office of Administrative Law (OAL), and opened to public comment for a 45-day period.
2. A public hearing was held on May 1, 2012. The Board received public comments. After reviewing these comments, staff proposed a number of technical and clarifying amendments to the originally proposed language.
3. The Board approved the technical and clarifying amendments that staff proposed on August 22, 2012. A 15-day public comment period was held from August 29 through September 13, 2012 for the new amendments. No comments were received during this timeframe.

There have been additional developments. Staff has been asked to make the additional amendments:

1. Exemptions for Minor Drug Convictions. DCA Legal recently informed staff that it is requesting that all boards make an additional amendment to their SB 1111 enforcement regulations.

The requested amendment affects the portion of the unprofessional conduct sections that make it unprofessional conduct to fail to report to the Board within 30 days a conviction of any felony or misdemeanor, or to fail to provide documentation to the Board regarding an arrest.

DCA Legal notes that there are certain types of convictions or arrests that are, by law, exempt from the reporting requirement. These exemptions, found in Penal Code Section 1000.4 and Health and Safety Code Sections 11357 and 11360, apply to minor drug convictions involving marijuana, or arrests following successful completion of a deferred entry of judgment program. DCA Legal advises that the Board needs to include reference to these exceptions in the unprofessional conduct provisions.

2. Strike Unprofessional Conduct – Prohibitions in Settlement Agreements Clause. AB 2570 was recently signed by the Governor and will become law on January 1, 2013. This bill allows the Board to pursue disciplinary action on a licensee or registrant who prohibits a consumer, as part of a civil suit, from filing a complaint with or cooperating with the Board or that requires the consumer to withdraw a complaint with the Board.

The language in this bill is duplicative of the unprofessional conduct provision originally proposed by this regulation package, and therefore needs to be deleted.

The Board will need to submit these new amendments for a 15-day public comment period.

***Christina Wong moved to direct staff to take all steps necessary to finalize the rulemaking process, including modifying the text as approved, submitting modified text for a 15-day public comment period, making any non-substantive changes to the rulemaking package, and submitting the final package to OAL. Renee Lonner seconded. The Board voted unanimously (10-0) to pass the motion.***

The Board took a break at 8:40 a.m. and reconvened at 9:00 a.m.

**V. In the Matter of Accusation Against Nancy Chinel Auvil – Further Hearing**

A hearing was conducted on January 17, 2012. The Board decided to not adopt the proposed decision, but instead, to conduct further trial proceedings and reach its own decision. Further hearing is now conducted.

Robert Walker, Administrative Law Judge (ALJ), presided over the hearing. Adrian Contreras, Deputy Attorney General (DAG), and Linda Schneider, DAG, represented the Board of Behavioral Sciences. Nancy Auvil was represented by her legal counsel.

Opening statements were presented and evidence was submitted. Cross-examination took place, as well as questioning from the Board.

After closing remarks were presented, Judge Walker closed the hearing at approximately 12:42 p.m.

**VI. Suggestions for Future Agenda Items**

There were no suggestions for future agenda items.

**VII. Public Comment for Items Not on the Agenda**

There were no public comments for items not on the agenda.

**FULL BOARD CLOSED SESSION**

**VIII. Pursuant to Section 11126(c)(3) of the Government Code, the Board Will Meet in Closed Session for Discussion and Possible Action on Disciplinary Matters**

The Board entered into closed session at approximately 12:47 p.m.

**FULL BOARD OPEN SESSION**

**IX. Adjournment**

The meeting was adjourned at the end of the closed session.